

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 11 CR 699-1  
 )  
YIHAO PU, also known as Ben Pu, ) Chicago, Illinois  
 ) May 16, 2016  
Defendant. ) 11:30 A.M.

TRANSCRIPT OF PROCEEDINGS - Status  
BEFORE THE HONORABLE CHARLES R. NORGLÉ, SR.

APPEARANCES:

For the Government: HON. ZACHARY FARDON  
219 South Dearborn Street  
Chicago, Illinois 60604  
BY: MR. PATRICK MARK OTLEWSKI

For the Defendant: FLACHSBART & GREENSPOON, LLC  
333 North Michigan Avenue  
27th Floor  
Chicago, Illinois 60601  
BY: MR. WILLIAM W. FLACHSBART

MS. CAROLYN PELLING GURLAND  
414 North Clay Street  
Hinsdale, Illinois 60521

ALSO PRESENT: Ms. Kelly A. Rice

PAMELA S. WARREN, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 2342  
Chicago, Illinois 60604  
(312) 408-5100

1 (Proceedings had in open court.)

2 THE CLERK: 11 CR 699, United States versus Yihao Pu,  
3 also known as Ben Pu, status.

4 MR. OTLEWSKI: Good morning, your Honor. Pat Otlewski  
5 on behalf of the United States.

6 THE COURT: Good morning, counsel.

7 MS. GURLAND: Good morning, your Honor. Carolyn  
8 Gurland and Will Flachsbart on behalf of Ben Pu.

9 THE COURT: Good morning, counsel.

10 MR. RICE: Kelly Rice from probation.

11 THE COURT: Good morning. What is the limited issue  
12 before the Court today?

13 MS. GURLAND: The limited issue before the Court, your  
14 Honor, is that on behalf of the defendant Mr. Pu we are  
15 requesting that the Court -- that we determine the period of  
16 supervised release to be added to the -- at the end of his  
17 18-month sentence, and that there be a judgment that issues  
18 that says that the sentence is the 18 months that your Honor  
19 decided. The purpose of that is that evidently, although we  
20 didn't appreciate this at the time of the sentencing, unless  
21 the order has issued, the Bureau of Prisons is not able to do  
22 the processing and calculations that they need to do to figure  
23 out when Ben would be released. So we have asked to have that  
24 matter clarified. We have our position if your Honor would  
25 like it on what the period of supervised released and the

1 conditions should be or perhaps you would like to hear from the  
2 government first on that issue.

3 THE COURT: Well, first let me say that this Court  
4 does not entertain motions by way of letters to the Judge. And  
5 what I have here is a letter which says, Dear Judge Norgle.  
6 That in my view is not a pleading. That is an unsolicited  
7 communication with a Judge. And there is a copy, of course, to  
8 the government. But that's not the way we do it in the  
9 Northern District of Illinois or certainly in this court.

10 MS. GURLAND: We did file a motion, your Honor. I can  
11 hand it up.

12 THE COURT: You did?

13 MS. GURLAND: We did also.

14 THE COURT: What is the date of that?

15 MS. GURLAND: It was May 11th.

16 THE COURT: All right. And so you call it  
17 supplemental memorandum in support of sentencing.

18 MS. GURLAND: Supplemental --

19 THE COURT: Does that supplement the letter?

20 MS. GURLAND: No, I would think it would be  
21 supplemental to our -- supplemental to our sentencing  
22 memorandum in aid of the sentencing.

23 MR. FLACHSBART: Your Honor, if I may, it was meant to  
24 replace the letter. Mr. Otlewski asked us that we file  
25 something with the Court, and we did so. Much of the material

1 is the same, with the exclusion of we removed any challenge to  
2 the conditions of release for only the 300 hours of community  
3 service.

4 THE COURT: First the issue of restitution is still  
5 before the Court.

6 MS. GURLAND: Yes, that's correct, your Honor.

7 THE COURT: And that is set for what date?

8 MS. GURLAND: June 8th -- 7th.

9 THE COURT: Well, that date will stand in terms of  
10 restitution.

11 MS. GURLAND: Yes.

12 THE COURT: But I don't intend to enter an order today  
13 that would be a final and appealable order today. I want to  
14 include in any final and appealable order the issue of  
15 restitution which is still before the Court.

16 Now on the issue of whether the supervised release  
17 should be the 36 months or 18 months, what is the government's  
18 position?

19 MR. OTLEWSKI: Your Honor, we believe that a period of  
20 18 -- I'm sorry -- of 36 months, not 12 months as recommended  
21 by the defendant, is appropriate.

22 THE COURT: Eighteen months is recommended by the  
23 defendant.

24 MR. OTLEWSKI: They recommended 12 months --

25 THE COURT: Excuse me.

1 MR. OTLEWSKI: -- in their supplemental memorandum.  
2 It appears in the letter they 18, but they have dropped that  
3 number six months.

4 THE COURT: Is that right?

5 MR. FLACHSBART: It was a typo, your Honor, yes. But  
6 18 obviously --

7 THE COURT: Pretty big typo.

8 MR. FLACHSBART: Yes, your Honor.

9 THE COURT: Okay. And so you're recommending a year  
10 rather than three years.

11 MR. FLACHSBART: Correct, your Honor.

12 THE COURT: You may argue your position.

13 MR. OTLEWSKI: Your Honor, before we do that,  
14 obviously since this proceeding relates to sentencing, the  
15 defendant has a right to be present under the rules. If the  
16 defendant is voluntarily absent, the Court can proceed. I  
17 haven't heard anything from defense counsel on whether the  
18 defendant has voluntarily waived his appearance for purposes of  
19 us addressing what is his sentence -- what will be a part of  
20 his sentence.

21 MS. GURLAND: He has voluntarily -- he voluntarily  
22 waives his appearance.

23 THE COURT: I will accept your representation that you  
24 have conferred with him and that he has waived his right to be  
25 personally present.

1 All right. So with respect to the period of  
2 supervised release, we also have a probation officer who is  
3 present.

4 From the probation department's position, what is your  
5 recommendation regarding the length of supervised release?

6 MR. RICE: Your Honor, I did not write the initial  
7 report. And you know her recommendation was 36 months at that  
8 time. So I just stuck with her initial recommendation since  
9 she's the one who did all the investigating.

10 THE COURT: That's an appropriate and honest answer.  
11 Thank you.

12 What is the government's position?

13 MR. OTLEWSKI: Your Honor, we're recommending it -- we  
14 agree with the probation's officer recommendation of 36 months.  
15 There is one significant factor that weighs in favor of that  
16 length. Your Honor, as the Court is aware, a significant part  
17 of the defendant's sentence will be the amount of restitution,  
18 what the government expects to prove to be approximately  
19 \$760,000. In order to ensure the defendant's continued ability  
20 to make restitution, have the financial ability to make that  
21 restitution and guidance from probation, it seems appropriate  
22 to have a substantial period of time consistent with what's  
23 required under the statute for restitution to make that  
24 restitution under the probation office's guidance.

25 THE COURT: So if the defendant made the restitution

1 immediately, as he's required to, would you then agree that the  
2 period of supervised release should be a year?

3 MR. OTLEWSKI: Your Honor --

4 THE COURT: I should say in the unlikely event that.

5 MR. OTLEWSKI: In the event that we have early  
6 restitution, the government often does come back and present  
7 those facts to the Court and say -- or either recommend an  
8 early termination of supervised release or modify the  
9 conditions of supervised release accordingly.

10 THE COURT: All right. So your principal argument is  
11 the restitution issue.

12 MR. OTLEWSKI: Correct, your Honor.

13 THE COURT: Are there any other points to support your  
14 position?

15 MR. OTLEWSKI: No, your Honor.

16 THE COURT: Okay. The defendant may argue.

17 MS. GURLAND: Thank you, your Honor.

18 The defense position -- I believe that where the  
19 36-month number came from that was included in the PSR or that  
20 was included in the recommendation, I should say, from  
21 probation was that your Honor had originally sentenced Mr. Pu  
22 to 36 months, and that that number simply paralleled what the  
23 Court's decision was.

24 I would respectfully submit that with an 18-month  
25 sentence, 18 months, or 12 months that we have asked for,

1 either one or more appropriately tailored to the time of the  
2 sentence.

3 Mr. Pu, as we discussed -- as I discussed and  
4 Mr. Flachsbart discussed with this Court in detail at the  
5 sentencing will have a job. He will be teaching. He will be  
6 returning to teaching. In fact, we talked about all of the  
7 efforts he has made to prepare himself for that endeavor. And  
8 he will doubtlessly be paying a percentage.

9 Also the -- he will be paying a percentage from that  
10 income, which he expects to have when he is released. And that  
11 I don't believe that it is necessary for him to be under the  
12 watch of the probation office to make that restitution.

13 It is also the case that even at the end of his term  
14 of supervised release, he will still have the obligation and he  
15 will still be under the -- he will still be under the Court's  
16 watch and will have to pay what -- the 10 percent a month  
17 continuing on until it is finally paid. So I don't believe  
18 that being on paper with the probation office adds anything to  
19 that, especially in a circumstance in which the probation is  
20 here, and he is in Boston.

21 THE COURT: What is your reply?

22 MR. OTLEWSKI: Your Honor, it is my understanding that  
23 the defendant will be supervised by a probation officer in the  
24 district where he is released on supervised release.

25 And also, your Honor, as the special conditions of the



1 probation officer has --

2 THE COURT: Well, we'll get to the special conditions.  
3 At the moment we're talking about length.

4 MR. OTLEWSKI: Length. And one of those special  
5 conditions is appropriate to discuss the length. One of the  
6 things that the probation officer recommends is that the Court  
7 impose a requirement that the defendant not incur new credit  
8 charges or open additional lines of credit. Obviously that  
9 deals with the matter of financial responsibility when a  
10 defendant is faced with a potential \$760,000 amount of  
11 restitution. Having the defendant under probation's guidance,  
12 with conditions like that, makes sense when financial  
13 responsibility will be a significant part of the defendant's  
14 supervised release.

15 THE COURT: One of the issues brought to the Court's  
16 attention by virtue of the Seventh Circuit opinion is that the  
17 Court did not articulate sufficiently to support what the Court  
18 had done. And the way this case has evolved, it would appear  
19 that Mr. Pu is virtually without fault, that's just a nice guy  
20 who got caught up under the circumstances. He's well on the  
21 path to rehabilitation. He is going to get a job teaching  
22 children, and we lose sight of the gravity of what he actually  
23 did.

24 And so with an abundance of caution and prudence, I am  
25 going to read into the record some portions of the plea

1 agreement so that it is clear that there is a substantial  
2 reason for the sentence imposed by the Court, and eventually  
3 for the period of supervised release that will be imposed, and  
4 the conditions. And so this will take a while. All of this  
5 has already been spread of record but not much attention was  
6 paid to it on appeal, I feel.

7           So, counsel, you may be seated. This is going to take  
8 a while.

9           So from on or about July 27, 2009, through on or about  
10 March 26, 2010, Pu was employed by Company A as a quantitative  
11 analyst. As a quantitative analyst, Pu's primary  
12 responsibilities included testing and analyzing HFT strategies.

13           From on or about March 2010 until August 27, 2011, at  
14 Chicago, Pu, with the intent to convert a trade secret to the  
15 economic benefit of someone other than the owner, knowingly did  
16 possess a trade secret belonging to Company A, file one, which  
17 contained Company A's HFT strategy and infrastructure source  
18 code, such as trade secrets being related to and included in a  
19 product that was produced for and placed in interstate commerce  
20 intending and knowing that the offense would injure Company A  
21 and knowing that trade secret was stolen and appropriated,  
22 obtained, and converted without authorization. And  
23 specifically Mr. Pu said that on or about March 25th, 2010, a  
24 day before he resigned from Company A, Pu downloaded and  
25 transferred from Company A's computer system thousands of files

1 containing Company A's business information, thousands of  
2 files, and copied those files onto Pu's personal hard drive.  
3 Among the files Pu transferred was file one, which contained  
4 Company A's HFT strategy and infrastructure source code.

5 Pu kept file one on his Seagate hard drive. File one  
6 was a trade secret belonging to Company A, and Company A took  
7 reasonable measures under the circumstances to keep file one  
8 secret. The information contained in file one was not  
9 generally known to the public and was not readily ascertainable  
10 through proper means by the public. The information contained  
11 in file one derived economic value from not being generally  
12 known and readily ascertainable through proper means by the  
13 public. File one was related to the purchase and sale of  
14 publicly traded stocks on financial markets in the United  
15 States by individuals located throughout the United States and  
16 abroad.

17 Pu knew that he obtained file one without  
18 authorization from Company A, and Pu intended to convert the  
19 trade secret to the economic benefit of himself, not Company A,  
20 the owner of the trade secret. Pu knew that this  
21 misappropriation of file one would injure Company A.

22 From on or about March 2010 until August 27, 2011, at  
23 Chicago, Pu, with the intent to convert a trade secret to the  
24 economic benefit of someone other than the owner thereof,  
25 knowingly and without authorization did possess a trade secret

1 belonging to Company A, file number two, which contained  
2 Company A's source code for computer programs relating to  
3 Company A's HFT strategy and infrastructure software. Such  
4 trade secret being related to and included in a product that  
5 was produced for and placed in interstate commerce, foreign  
6 commerce, knowing that the trade secret was appropriated,  
7 obtained, and possessed without authorization.

8         The plea agreement goes on to say that specifically on  
9 or about March 25, 2010, a day before Pu resigned from Company  
10 A, Pu downloaded and transferred from Company A's computer  
11 system onto Pu's personal hard drive file two, which contained  
12 Company A's source code for computer programs related to  
13 Company A's HFT strategy and infrastructure and software. Pu  
14 kept file two on his Seagate hard drive. File two was a trade  
15 secret belonging to Company A, and Company A took reasonable  
16 measures under the circumstance to keep it secret.

17         The information in file two was not generally known to  
18 the public and was not immediately ascertainable through proper  
19 means by the public. The information contained in file two  
20 derived economic value from not being generally known and  
21 readily ascertainable through proper means by the public. File  
22 two was related to the purchase and sale of publicly traded  
23 stocks on financial markets in the United States by individuals  
24 located throughout the United States and abroad. Pu knew that  
25 he obtained file two without authorization from Company A. Pu

1 intended to convert the trade secret to the economic benefit of  
2 himself, not Company A the owner of the trade secret. Pu knew  
3 that his misappropriation of file two would injure Company A.

4 Pu then moved on to Citadel. Citadel required  
5 employees to sign a non-disclosure agreement in which Citadel  
6 employees agreed to use confidential information only as  
7 required to perform their duties for Citadel and not for their  
8 personal benefit or for the benefit of any other individual or  
9 entity.

10 I'm not reading the entire written plea agreement  
11 verbatim, but taking parts of it.

12 MS. GURLAND: Your Honor, can I -- I have had a  
13 meeting with a whole front office of the U.S. Attorney's Office  
14 in another case scheduled for --

15 THE COURT: You may leave the room if you choose to.  
16 Your colleague will remain.

17 MS. GURLAND: Is that all right, your Honor?

18 THE COURT: Yes, indeed.

19 MS. GURLAND: Thank you.

20 THE COURT: The non-disclosure agreement defined  
21 confidential information as including information relating to  
22 Citadel's internal financial affairs, strategies, portfolio  
23 holdings, portfolio management techniques, quantitative  
24 analytics, and models used to evaluate financial instruments  
25 proprietary software, including the proprietary system

1 architectures and Citadel's business and investment process.  
2 It was material to Citadel that its employees used Citadel's  
3 confidential business information in a manner consistent with  
4 Citadel's employee handbook non-disclosure agreement and  
5 policies.

6 Page 10 goes into great detail as to Citadel's trade  
7 secrets, as does page 11.

8 Now with respect to Pu's employment at Citadel, in or  
9 about May 2010, through on or about August 30, 2011, Pu was  
10 employed by Citadel as a quantitative financial engineer. As a  
11 quantitative financial engineer, Pu's primary job  
12 responsibilities included working with analysts and researchers  
13 to develop and enhance certain of Citadel's HFT's strategies.  
14 On or about March 25, 2010, Pu signed Citadel's non-disclosure  
15 agreement. On or about May 17, 2010, on or about his first day  
16 of employment at Citadel, Pu signed Citadel's employee handbook  
17 acknowledgment form. That was his first day on the job. And  
18 in that form he acknowledged that he was responsible for  
19 reading the employee handbook, familiarizing himself with its  
20 contents, and adhering to all the policies and procedures of  
21 Citadel. On June 15th of 2010 and again on August 1, 2011, Pu  
22 certified that he had received Citadel's policies and  
23 procedures and that he understood that he was obligated to  
24 comply with them.

25 Between on or about August 9th, 2011, and on or about

1 August 26, 2011, here in the Northern District of Illinois, Pu,  
2 with the intent to convert a trade secret to the economic  
3 benefit of someone other than the owner thereof, knowingly, and  
4 without authorization, did copy, duplicate, download, upload,  
5 replicate, and transmit a trade secret belonging to Citadel;  
6 namely, file number three, which contained alpha data and term  
7 data, such trade secret being related to, included in a product  
8 that was produced for and placed in interstate commerce  
9 intending and knowing that the offense would injure Citadel,  
10 his employer.

11 Specifically, beginning on or about November 11, 2010,  
12 Pu circumvented Citadel's computer securities measure in order  
13 to allow him to download and transmit Citadel's trade secrets  
14 from Pu's work computer to Pu's personal electronic storage  
15 devices. Pu, without the required authorization from Citadel,  
16 created two virtual machines on his Citadel work computer.  
17 These virtual machines allowed Pu to access computer ports that  
18 Citadel previously disabled and further allowed Pu to gain  
19 unauthorized access to Citadel's computer system. Pu used his  
20 unauthorized access to the work computers's ports to connect  
21 his own personal electronic devices to the Citadel computer  
22 system. Pu then encrypted one of the virtual machines which  
23 concealed its contents. Pu did not disclose to Citadel that he  
24 had manipulated its computer systems.

25 Pu further admitted at the time the plea was accepted

1 that between on or about August 9th, 2011, and on or about  
2 August 26, 2011, Pu used his virtual machines to connect  
3 personal electronic storage devices to ports on his Citadel  
4 work computer. Pu then downloaded, copied, and transmitted  
5 file three which contained Citadel's alpha data and term data  
6 from Citadel's computer system to Pu's own personal electronic  
7 storage devices. Pu kept file three on his Western Digital  
8 hard drive. In order to commit and facilitate his commission  
9 of the theft of three from Citadel, Pu also used his computer  
10 and a Hitachi hard drive, serial number is mentioned in the  
11 agreement, and a Motorola droid phone.

12 File three was a trade secret belonging to Citadel.  
13 Citadel took reasonable measures under the circumstances to  
14 keep file three secret. The information contained in file  
15 three was not generally known to the public and was not readily  
16 ascertainable through proper means by the public.

17 The information contained in file three derived  
18 economic value from not being generally known and readily  
19 ascertainable through proper means by the public. File three  
20 was related to the purchase and sale of publicly traded  
21 financial instruments on financial markets in the United States  
22 and abroad. Pu knew that when he obtained file three without  
23 the authorization from Citadel that he intended to convert the  
24 trade secret to the economic benefit of himself, not Citadel,  
25 the owner. Pu knew that his misrepresentation,



1 misappropriation of file three would injure Citadel.

2 Page 14 of the written plea agreement goes on in  
3 detail, once again, with respect to files four, five, six,  
4 seven, eight, and nine. It goes into great details in terms of  
5 what he did regarding those files.

6 Now the plea agreement then on page 15 goes into more  
7 detail as to what Mr. Pu actually did in this case. On or  
8 about August 26, 2011, Citadel representatives confronted Pu  
9 concerning the unauthorized virtual machines on his Citadel  
10 work computer. Citadel representatives instructed Pu to return  
11 to Citadel and preserve and not destroy any of Citadel's  
12 confidential information in his possession. Pu was further  
13 instructed to refrain from deleting, overwriting, altering, and  
14 modifying any documents, records, and electronic files relating  
15 or referring to Citadel.

16 On or about August 26, 2011, Pu, acting with a belief  
17 that a federal investigation into his conduct might begin at  
18 some point in the future, with the assistance of Individual A,  
19 concealed and transferred from Pu's apartment to Individual A's  
20 apartment computer equipment, including the Seagate hard drive  
21 which contained file one and file two, along with large amounts  
22 of Pu's personal files and the Hitachi hard drive, which  
23 contained file five and six with large amounts of Pu's personal  
24 files.

25 On August 27, 2011, Pu went to Individual A's

1 residence, and Pu set up his computer equipment and erased data  
2 from certain of the hard drives. This he did at A's residence.

3 On or about August 28, 2011, Pu agreed to have  
4 Individual A dispose of certain computer equipment, including  
5 the Hitachi hard drive. Individual A took six of Pu's hard  
6 drives, including the Hitachi hard drive, and discarded them  
7 into a sanitary canal near Wilmette Harbor in Illinois. Pu  
8 also asked Individual A to hide the Seagate hard drive with  
9 which Individual A did.

10 Pu also from on or about August 26, 2011, to on or  
11 about August 28, 2011, here in the Northern District of  
12 Illinois, together with A, knowingly altered, destroyed,  
13 concealed, and covered up a record, document, and tangible  
14 object; namely, computer equipment that contained electronic  
15 documents and files containing proprietary and confidential  
16 information of Company A and Citadel. And they did so with the  
17 intent to impede, obstruct, and influence the investigation and  
18 proper administration of any matter within the jurisdiction of  
19 any department and agency of the United States in relation to  
20 and contemplation of any such matter and case in violation of  
21 18 U.S.C 1519.

22 These are things that the defendant admitted to in the  
23 written plea bargain agreement. We also have learned along the  
24 way that Mr. Pu destroyed a hard drive with a hammer. So I'm  
25 reading this and, once again, making the point of the gravity

1 of what Pu did.

2           There is a great deal of other information before the  
3 Court contained in the original presentence investigation  
4 report, the submissions of the government, and also the  
5 defendant.

6           And so given all of this background, this is not a  
7 case that would lend itself to a short period of supervised  
8 release. This -- this defendant, Mr. Pu, is someone that has  
9 to be watched over an extended period of time. He has to be  
10 supervised. There must be written conditions that he's  
11 obligated to follow, one of which, obviously, is the  
12 restitution.

13           So in terms of length, the Court rejects the position  
14 of the defendant that it be one year and agrees with the  
15 government and probation that the period of supervised release  
16 should be 36 months. A key factor, obviously, is the  
17 restitution which is still to be determined by the Court.  
18 There is no doubt that the restitution in this case will reach  
19 hundreds of thousands of dollars. The Court has yet to deal  
20 with the specifics regarding restitution. The government's  
21 position remains, as I understand it, that it is still \$750,000  
22 that is challenged by defendant, and we have set that for a  
23 future date to deal with the issue of restitution. But the  
24 length of supervised release, given the circumstances in this  
25 case, will be three years and certainly not one year.

1           Now there are a number of recent cases that say the  
2 conditions of supervised release must be read in open court.  
3 Under 18 U.S.C. Section 3583(a), and recent cases of the  
4 Seventh Circuit, bringing this to the attention of the Court,  
5 quote, only punishment stated orally in open court at  
6 sentencing are valid. Because supervised release is part of  
7 the sentence, the Court must also orally pronounce both its  
8 oral imposition and its conditions.

9           And so, first, there is a disputed condition, and that  
10 is Condition 13. Is that right?

11           MR. FLACHSBART: Your Honor, the only condition that  
12 is disputed is Condition 12, your Honor, which is his work and  
13 community service for 300 hours.

14           THE COURT: What is the government's response?

15           MR. OTLEWSKI: We have no objection to striking that  
16 condition in light of the --

17           THE COURT: I agree that it is not necessary under the  
18 circumstances in this case. And as the Court said originally,  
19 and as requoted, the defendant has done some public service  
20 work and is very likely to do public service work of his own  
21 volition. That's something he would want to do. So he is not  
22 obligated to do 300 hours of public service work.

23           There is a condition, however, that I am obligated to  
24 read that deals with community service in the event he is  
25 unemployed for some period of time. But what these cases say

1 is that the conditions must be read in open court, and that is  
2 what the Court is obligated to do.

3 So with respect to the supplemental report provided by  
4 the probation department, they contain the mandatory  
5 conditions, discretionary conditions, and special conditions.  
6 The defendant has waived his right to appear. So the  
7 conditions originally imposed will, once again, be imposed.  
8 The Court sustains the position of the defendant --

9 MR. FLACHSBART: Your Honor, I suspect neither the  
10 government nor us would like the original conditions, but only  
11 the supplemental -- the report's conditions due to the fact  
12 that those conditions include, for example, the impermissible  
13 condition with respect to being present where controlled  
14 substances are, even unknowingly.

15 THE COURT: These are the conditions I intend to  
16 impose. They are the ones submitted by the probation  
17 department in their supplemental report submitted to the Court  
18 on May 9th. So I intend to impose them, and I intend to read  
19 them into the record.

20 Now it is my understanding that you have agreed to  
21 this. Is this not correct?

22 MR. FLACHSBART: Those conditions, yes, your Honor,  
23 absolutely.

24 THE COURT: The ones that are contained --

25 MR. FLACHSBART: May 9th.

1 THE COURT: -- in the May 9th supplemental report.

2 Is that the government's position?

3 MR. OTLEWSKI: Yes, your Honor.

4 THE COURT: Okay. Do you have that report before you?

5 MR. OTLEWSKI: I do, your Honor.

6 THE COURT: All right. And it is submitted by the  
7 probation department, filed on May 9th.

8 But as these recent cases point out, the Court is  
9 required to read them orally in open court. And so mandatory  
10 conditions of supervised release pursuant to 18 U.S.C. Section  
11 3583(d). Number one, not commit another federal, state or  
12 local crime.

13 Number two, not unlawfully possess a controlled  
14 substance.

15 Number five, cooperate in the collection of a DNA  
16 sample if the collection of such sample is required by law.

17 Moving on to discretionary conditions. Number two,  
18 make restitution to a victim of the offense under 3556, but not  
19 subject to the limitations of 3663(a) or 3663(a)(C)(1)(A).

20 Number four, seek and work conscientiously at lawful  
21 employment or pursue conscientiously a course of study of  
22 vocational training that will equip the defendant for  
23 employment.

24 Number six, refrain from knowingly meeting or  
25 communicating with any person whom the defendant knows to be

1 engaged or planning to be engaged in criminal activity.

2           Number seven, refrain from any use of narcotic drugs  
3 or other controlled substances as defined under Section 102 of  
4 the Controlled Substance Act, 21 U.S.C. Section 802, without a  
5 prescription by a licensed medical practitioner.

6           Number eight, refrain from possessing a firearm,  
7 destructive device or other dangerous weapon.

8           Twelve is the one that is not going to be imposed in  
9 this case.

10           Fourteen, remain within the jurisdiction where the  
11 defendant is being supervised unless granted permission to  
12 leave by the Court or a probation officer.

13           Fifteen, report to a probation officer as directed by  
14 the Court or probation officer.

15           Sixteen, permit a probation officer to visit the  
16 defendant at any reasonable time at home, at work, at school.

17           Seventeen, notify a probation officer promptly within  
18 72 hours of any change in residence, employer or workplace.  
19 And absent constitutional or other legal privilege, answer  
20 inquiries by a probation officer.

21           Eighteen, notify a probation officer promptly within  
22 72 hours if arrested or questioned by a law enforcement  
23 officer.

24           Twenty-two, satisfy such other special conditions as  
25 recommended below. And reading those recommended below as

1 special conditions under 3563(b)(22) and 3583(d), condition  
2 number three, to which the Court alluded earlier, if unemployed  
3 after the first 60 days of supervision or if unemployed for 60  
4 days after termination or layoff from employment, perform at  
5 least 20 hours of community services per week at the direction  
6 of the U.S. Probation Office until gainfully employed.

7 Special condition number five, not incur new credit  
8 charges or open additional lines of credit without the approval  
9 of a probation officer, unless the defendant is in compliance  
10 with the financial obligations imposed by this judgment.

11 Number six, provide a probation officer with access to  
12 any requested financial information necessary to monitor  
13 compliance with conditions of supervised release.

14 Number seven, notify the Court of any material changes  
15 in the defendant's economic circumstances that might affect the  
16 defendant's ability to pay restitution fines or special  
17 assessments.

18 Number eight, provide documentation to the IRS and pay  
19 taxes as required by law.

20 Condition number ten, pay any financial penalty that  
21 is imposed and remains unpaid at the commencement of the term  
22 of supervised release. The defendant's monthly payment  
23 scheduled shall be an amount that is at least 10 percent of the  
24 defendant's net monthly income defined as income net of  
25 reasonable expenses for basic necessities, such as food,



1 shelter, utilities, insurance, and employment-related expenses.

2 Number eleven, not enter into any agreement to act as  
3 an informer or special agent of a law enforcement agency  
4 without the permission of the Court.

5 Thirteen, notify as directed by the probation officer  
6 third parties of risks that may be occasioned by the  
7 defendant's criminal record or personal history or  
8 characteristics, and shall permit the probation officer to make  
9 such notifications and to confirm the defendant's compliance  
10 with such notification requirements.

11 I have read the oral conditions of supervised release.  
12 And that is in compliance with United States of America versus  
13 Jamie Oroczo, O-r-o-c-z-o, hyphen, Sanchez, also known as Oscar  
14 Oroczo, case decided February 26, 2016, by the Seventh Circuit  
15 Court of Appeals.

16 And another case, United States versus Seals, decided  
17 February 23, 2016, by the Seventh Circuit Court of Appeals.

18 So what remains is the restitution issue. From the  
19 probation department's standpoint, with respect to the issues  
20 before the Court today, have I missed anything?

21 MR. RICE: Judge, just on Condition 16, there is also  
22 a section called -- or saying permit confiscation of any  
23 contraband. Did you want that part of 16 imposed?

24 THE COURT: Let me get back to 16.

25 MR. RICE: Sixteen under discretionary.

1           THE COURT: The page that I have skips from 12 to 21.  
2 I don't have a 16 in the submission.

3           MR. RICE: I'm looking at our supplemental report,  
4 page 3.

5           THE COURT: Supplemental report page 3. All right.  
6 Just a minute. Page 1, I have page 2, I have page 4. Now I  
7 have discovered page 3, which I think I read earlier, but let  
8 me emphasize this.

9           So 16, once again -- I do recall reading this, but I  
10 may have missed something. All right. Condition 16,  
11 supplemental report, page 3, of May 9th, 2016. Permit a  
12 probation officer to visit the defendant at any reasonable time  
13 at home, at work, at school, at a community service location,  
14 other reasonable locations specified by a probation officer.

15           And so the one that you have just brought to my  
16 attention is permit confiscation of any contraband observed in  
17 plain view of the probation officer. That too will be imposed.

18           MR. RICE: Thank you.

19           THE COURT: I have just read it. It is so ordered.

20           MR. RICE: Thank you, your Honor.

21           THE COURT: Have I missed any others?

22           MR. RICE: No, your Honor.

23           THE COURT: Okay. So the matter will be continued  
24 then to deal with this issue of restitution. What's the most  
25 recent submission of the government regarding the restitution

1 issue? Dated what date?

2 MR. OTLEWSKI: It was dated -- Docket Number 281,  
3 dated April 22nd, 2016, your Honor.

4 THE COURT: That's the most recent?

5 MR. OTLEWSKI: Yes.

6 THE COURT: Do you intend to supplement that in any  
7 way.

8 MR. OTLEWSKI: We do, your Honor. We plan to present  
9 two sets of exhibits. I have produced those to defense  
10 counsel. One set of exhibits includes the unredacted invoices  
11 and bills from FTI, the consultant hired by -- the forensic  
12 consulting firm hired by Citadel, as well as the unredacted  
13 billing statements and invoices from Greenburg Traurig, the  
14 outside firm, group of attorneys, hired by Citadel to conduct  
15 the investigation. Those have been provided to defense  
16 counsel. I'm going to provide a set to the probation officer  
17 as well so that she can --

18 THE COURT: When do you expect to make that filing?

19 MR. OTLEWSKI: I was planning to do it today, your  
20 Honor.

21 THE COURT: All right. Can you do it tomorrow?

22 MR. OTLEWSKI: Yes.

23 THE COURT: All right. How much time would you need  
24 to respond, counsel?

25 MR. FLACHSBART: Probably about a week, your Honor.

1           THE COURT: Would that -- the date for the restitution  
2 is, did you say, June 8th or --

3           MR. FLACHSBART: June 7th.

4           THE COURT: All right. What is the date,  
5 Mr. Fulbright?

6           THE CLERK: June 7 at 10:30.

7           THE COURT: June 7th.

8           All right. So try to get the defendant's submission  
9 in by June 6th, which would be a Monday. The hearing remains  
10 set for June 7th.

11           All right. So I think I have resolved everything that  
12 was before the Court today. The restitution issue will be  
13 argued on June 7th. 10:30, June 7th.

14           MR. FLACHSBART: We have only one request, your Honor,  
15 if we may. I understand that it is not appealable until we  
16 have dealt with the restitution, but if your Honor would not  
17 mind entering an order with respect to the sentence and the  
18 probation so that it can be conveyed to the BOP so they can do  
19 the things that have to do, which are well beyond my  
20 competency.

21           THE COURT: That will be the job of Mr. Fulbright as  
22 the clerk.

23           (Discussion off the record.)

24           THE COURT: But the order, which results from the  
25 rulings that the Court has made, in the first instance, it

1 should be submitted by the prosecution, the prevailing party  
2 here.

3 So present an order for the Court to sign. Show it to  
4 opposing counsel. And if there are objections to its substance  
5 or form, we can deal with them. But this is not the absolute,  
6 final appealable judgment, it would simply be an order dealing  
7 with the rulings I have made today.

8 Now with respect to the restitution figure, the  
9 government's basic position is \$750,000. If the defendant can  
10 reach an agreement on some -- with the government, if you can  
11 reach an agreement that is reasonable, you could submit an  
12 agreed order. And if the Court agrees with the reasonableness  
13 of it, the Court could be in a position to sign it.

14 On the other hand, the defendant does have the right  
15 to be present and to argue against the government's position  
16 which is as of today \$750,000.

17 But, once again, I'll leave this in your capable  
18 hands, and the Court will be ready to proceed on June 7th at  
19 10:30.

20 MR. FLACHSBART: Thank you, your Honor.

21 MR. OTLEWSKI: Thank you, your Honor.

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CERTIFICATE

I certify that the foregoing is a correct transcript from the digital recording of proceedings in the above-entitled matter to the best of my ability, given the limitation of using a digital-recording system.

**/s/ Pamela S. Warren**  
Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division

November 29, 2016  
Date